

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Attorney's Office for the Eastern District of Pennsylvania and on behalf of the office of Inspector General ("OIG") of the Department of Health and Human Services ("HHS") (collectively the "United States"), Richard Rothman, M.D. ("Dr. Rothman"), and Reconstructive Orthopaedic Associates II ("ROA II") through their authorized representatives. Hereafter, the above individuals and entities are referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. During the period from April 1, 1993 through December 31, 1996, Dr. Rothman, a medical doctor, furnished medical care as a physician and performed surgery at Pennsylvania Hospital, 8th & Spruce Streets, Philadelphia, Pennsylvania, which is located within the Eastern District of Pennsylvania federal judicial district. In his offices and at Pennsylvania Hospital, Dr. Rothman provided medical

services to, among other individuals, beneficiaries of the Medicare program.

B. The United States contends that ROAII, Dr. Rothman, and another company known as Reconstructive Orthopedic Associates, which was since merged into Healthgrades, Inc. ("ROA"), submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

C. The United States contends that it has civil monetary claims for unjust enrichment and payment under mistake of fact (collectively, "Civil Claims") in connection with the submission of claims for reimbursement to Medicare for surgical services rendered by Dr. Rothman, and billed by ROA or ROAII from April 1, 1993 until December 31, 1996. The United States contends that claims were submitted and payments were made to ROA or ROAII in a manner inconsistent with the applicable regulations, guidelines and directives that require the attending/teaching physician to be present in the operating room for a sufficient amount of time to meet all of the Medicare reimbursement requirements,

including but not limited to those found at 42 CFR 405.521(b)(2) and (b)(3) (October 1994). Although ROAII and Dr. Rothman disagree with the government's interpretation of the regulations, and contend that Dr. Rothman has provided all of the services expected of a physician both as a matter of proper medical care and as required by all regulations relating to reimbursement for such services by the United States and any other payor, in order to resolve the claims, the allegedly improperly billed and paid amounts are being reimbursed to the United States. Hereinafter the conduct identified in Paragraph C, shall be referred to as the "Covered Conduct".

D. The United States also contends that it has certain administrative claims with respect to the Covered Conduct under the provisions for permissive exclusion from the Medicare and Pennsylvania Medicaid programs, 42 U.S.C. § 1320a-7(b), and civil monetary claims or penalties under 42 U.S.C. § 1320a-7a and 31 U.S.C. §3801-3812 (collectively, "Administrative Claims") for the Covered Conduct.

E. Dr. Rothman and ROAII deny the contentions of the United States as set forth in Paragraphs (A)-(D), above, and deny any liability in connection with the "Covered Conduct."

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. ROA II and Dr. Rothman agree to pay to the United States \$838,453.25 in damages. Of the total, \$763,453.25 shall be paid by ROA II and \$75,000.00 shall be paid by Dr. Richard Rothman. In addition, ROAII and Dr. Rothman shall pay to the United States an agreed amount of interest on the above sum calculated from January 1, 1996 to the present, calculated at the rate specified in 42 CFR § 405.378 setting the rate applicable to the Medicare trust fund. The damages plus the agreed upon interest shall

hereafter be referred to as the Settlement Amount.

Notwithstanding the payment obligations divided above, both parties are jointly and severally liable for the total payments to the United States of America. The parties shall pay their respective amounts in two equal installments the first due on or before May 30, 2003 and the second payment on or before July 26, 2003. The payments will be made by electronic transfer pursuant to instructions from the United States Attorney's Office for the Eastern District of Pennsylvania.

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of ROAII and Dr. Rothman set forth in this Agreement, conditioned upon payment in full of the Settlement Amount, and institution and compliance with the Integrity Agreement set forth in Attachment A, and subject to Paragraph 11, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States agrees to, and does hereby, release any "Civil Claims" (as defined in paragraph C above) it has or may have, against Dr. Rothman, ROA II, Healthgrades, Inc., or any persons employed by or formerly employed by ROAII or Healthgrades, Inc. (the

"Released Parties") for the claims which were submitted to Medicare by ROA or ROA II from April 1, 1993 until December 31, 1996 and paid by Medicare for surgical services allegedly performed by Dr. Rothman and/or any other doctors employed by Healthgrades, Inc. Subject to the exceptions in paragraph 3 below, in consideration of the obligations of Dr. Rothman and ROA II set forth in this Agreement, conditioned upon payment in full of the Settlement Amount and subject to paragraph 11 below, (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), the United States and the OIG-HHS agree to, and does hereby, release and refrain from instituting, directing or maintaining any "Administrative Claims" (as defined in paragraph D above) against Dr. Rothman and ROAII for the conduct described in this paragraph. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3 below. In the event that either Dr. Rothman or ROA II should fail to comply with his or its respective obligations under this Agreement, including their obligations to enter into an Integrity Agreement and make payment in full of the

Settlement Amount in accordance with this Agreement, such failure should only affect the release herein granted to such noncomplying person or entity.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

(a) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(b) Any criminal liability for the Covered Conduct;

(c) Except as explicitly stated in this Agreement, any administrative liability, including any statutory obligation of HHS-OIG to institute mandatory exclusion proceedings under 42 U.S.C. §1320a-7(a);

(d) Any liability to the United States (or its agencies), for any conduct other than the Covered Conduct; and

(e) Any claims based upon such obligations as are created by this Agreement, including the Integrity Agreement set forth at Attachment A.

4. On this same date Dr. Rothman and ROA II have entered into an Integrity Agreement with OIG of HHS as set forth in Attachment A. Dr. Rothman and ROA II shall begin implementation of the Integrity Agreement on the day this Settlement Agreement becomes effective in accordance with the terms of the Integrity Agreement

5. Dr. Rothman and ROA II agree that this settlement covers only civil and administrative matters, is not punitive in purpose or effect and has no criminal aspect or intent. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

6. Dr. Rothman and ROA II fully and finally release the United States and its agencies, employees, servants, and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which

Dr. Rothman and ROA II have asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, based upon acts or omissions prior to the effective date of this Agreement related to the Covered Conduct and the Government's investigation and settlement thereof.

7. Any amounts that Dr. Rothman and ROA II must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, related to the Covered Conduct; and Dr. Rothman and ROA II agree not to resubmit any claims for payment to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

8. (a) Dr. Rothman and ROA II agree that all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v and the regulations promulgated thereunder) and attorney's fees

incurred by or on behalf of Dr. Rothman or ROA II, or any entity that Dr. Rothman owns or controls, in connection with: (1) the matters covered by this Agreement, (2) the Government's audit and civil investigation of the matters covered by this Agreement, (3) Dr. Rothman's and ROA II's investigation, defense, and corrective actions including those actions undertaken in response to the Government's audit and civil investigation in connection with the matters covered by this Agreement, (4) the negotiation and performance of this Agreement, (5) the payment made pursuant to this Agreement, and (6) negotiation of the Integrity Agreement and the obligations undertaken pursuant to the Integrity Agreement to retain an independent review organization to perform annual reviews, as described in Section III of the Integrity Agreement, and prepare and submit reports to OIG, (collectively, "Unallowable Costs") are unallowable costs on Government contracts and under the Medicare Program. Dr. Rothman and ROA II will not charge such unallowable costs directly or indirectly to any contracts with the United States, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Dr.

Rothman or ROA II, or any entity that Dr. Rothman or ROA II owns or controls, to the Medicare or Medicaid programs.

(b) Future Treatment of Unallowable Costs:

To the extent applicable, the Unallowable Costs will be separately estimated and accounted for by Dr. Rothman and ROA II, and Dr. Rothman and ROA II will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Dr. Rothman and ROA II or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: To the extent applicable, each of Dr. Rothman and ROA II severally further agrees that within 60 days of the effective date of this Agreement, he or it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any Unallowable Costs included in payments previously sought from the United States, or any

State Medicaid Program, including, but not limited to payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by either Dr. Rothman or ROA II, respectively, or any of their respective subsidiaries, and each of Dr. Rothman and ROA II, severally will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Dr. Rothman and ROA II each severally agree that the United States, at a minimum, will be entitled to recoup from Dr. Rothman any overpayment received by Dr. Rothman and from ROA II any overpayment received by ROA II, plus applicable interest, as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by either Dr. Rothman or ROA II or any of their respective subsidiaries on the effect of

inclusion of unallowable costs (as defined in the Paragraph) on Dr. Rothman and ROA II or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

9. Dr. Rothman and ROA II agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or recipients, or their parents, guardians or sponsors. Dr. Rothman and ROA II waive any causes of action against these beneficiaries or recipients, or their parents, guardians or sponsors based upon the claims for payment covered by this Agreement.

10. Dr. Rothman and ROA II severally expressly warrant that each has reviewed his or its respective financial situation and that each currently is solvent within the meaning of 11 U.S.C. § 547 (b) (3), and that neither the payment to the United States of the Settlement Amount, nor any other combination of present or future obligations that they now anticipate, would render him or it

insolvent. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Dr. Rothman and ROA II, within the meaning of 11 U.S.C. § 547 (c) (1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Dr. Rothman and ROA II expressly agree that for purposes of any subsequent proceedings in bankruptcy that their liability under this settlement arose as the result of submission of fraudulent claims to the United States and their liability under this settlement agreement is not dischargeable under the Bankruptcy Code.

11. In the event Dr. Rothman or ROA II commences, or a third party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Dr. Rothman and ROA II's debts, or seeking to adjudicate Dr. Rothman or ROA II as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee,

custodian or other similar official for Dr. Rothman or ROA II or for all or any substantial part of Dr. Rothman's or ROA II's assets, Dr. Rothman and ROA II agree as follows:

(a) Dr. Rothman's and ROA II's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Dr. Rothman and ROA II will not argue or otherwise take the position in any such case, proceeding or action that: (i) their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States of the Settlement Amount; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dr. Rothman and ROA II;

(b) In the event that Dr. Rothman or ROA II's obligations hereunder are avoided through the exercise of a trustee's avoidance powers under the Bankruptcy Code and/or pursuant to 11 U.S.C. § 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Dr. Rothman and ROA II for the claims

that would otherwise be covered by the releases provided in Paragraph 2 above. If the United States exercises this option, Dr. Rothman and ROA II agree that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Dr. Rothman or ROA II from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. 362 (a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Dr. Rothman or ROA II will not argue or otherwise contend that the United States' actions or proceedings are subject to an automatic stay; (ii) that Dr. Rothman or ROA II will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within 30 calendar days of written notification to Dr. Rothman or ROA II that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Agreement; and (iii) notwithstanding the fact that Dr. Rothman or ROA II continue

to dispute the United States' allegations of wrongdoing, and solely for the purpose of this Paragraph, the United States shall hold a valid undisputed claim and Dr. Rothman and/or ROA II expressly waives and agrees not to plead, argue or otherwise raise any defenses otherwise available to him regarding such a claim, and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Dr. Rothman and ROA II acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

12. Dr. Rothman and ROA II agree that they will cooperate with the United States in its investigation of individuals involved in any alleged improper Medicare billings.

13. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Dr. Rothman and ROA II represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and acknowledge that they have been represented by and have had the full advice of counsel.

15. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the Integrity Agreement will be resolved according to its provisions.

16. This Agreement including Attachment A, the Integrity Agreement between Dr. Rothman and ROA II and the Office of Inspector General of the Department of Health and Human Services, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the parties whose obligations will be affected by the amendment, except that any changes to the Integrity Agreement need only be signed by OIG-HHS and Dr.

Rothman and ROAII pursuant to the procedures set forth therein.

17. The undersigned individuals signing this Agreement on behalf of ROA II represent and warrant that they are authorized by ROA II to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

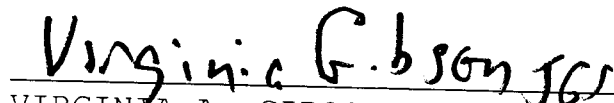
19. Dr. Rothman and ROA II understand that this Agreement may be disclosed to the public and consent to the same.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement.


THE UNITED STATES OF AMERICA

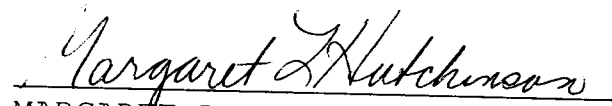
BY:


PATRICK L. MEEHAN
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VIRGINIA A. GIBSON
Assistant U.S. Attorney
Chief, Civil Division

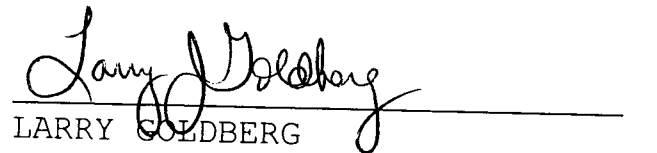
DATED: 4/15/03


SUSAN DEIN BRICKLIN
Assistant U.S. Attorney


MARGARET L. HUTCHINSON
Assistant U.S. Attorney

DATED: 4-15-03

BY:



LARRY GOLDBERG
Assistant Inspector General for
Legal Affairs
U.S. Department of Health
and Human Services

DATED: 4/8/03

DR. RICHARD ROTHMAN

Witnessed By:

BY:


Brian P. Flaherty
Wolf, Block, Schorr and
Solis-Cohen


Dr. Richard Rothman

Counsel for Dr. Rothman

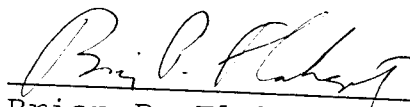
DATED: April 14, 2003

DATED: April 14, 2003

ROA II

Witnessed By:

BY:



Brian P. Flaherty
Wolf, Block, Schorr and
Solis-Cohen



Dr. Richard Rothman, President

Counsel for ROAII

DATED:

April 14, 2003

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